IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

CRP.No. 881 of 2007()

IA 2660/06 in AS.97/1994 of II ADDL.DISTRICT COURT,ERNAKULAM
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REVN. PETITIONERS: PETITIONERS
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1. MUNDADAN CHITS & FINANCIERS,
MORNING STAR BUILDINGS,KACHERIPADY,
ERNAKULAM,COCHIN-18,
REPRESENTEDBY ITS MANAGING PARTNER
FRANCE C. MUNDADAN.

2. FRANCE C. MUNDADAN, AGED 46 YEARS
MANAGING PARTNER MUNDADAN CHITS & FINANCIERS,
MORNING STAR BUILDINGS,KACHERIPADY,
COCHIN-18,

BY ADV. SRI.G.RAJAGOPAL
SRI.THOMAS M.JACOB

RESPONDENT: RESPONDENT

M.C.VARGHESE,
AGED ABOUT 47 YEARS,
S/O.CHERIAN,MUNDADAN HOUSE,
NEAR EAST CHURCH, ANGAMALY.

BY ADV. SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.Krishnan, J.

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C.R.P.No.881 of 2007

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Dated this the 19th day of November, 2007.

ORDER

This revision petition is filed against the order of the learned Second Additional District Judge, Ernakulam in I.A.No.2660 of 2006 in A.S.No.97 of 1994. Brief facts necessary for the disposal of the revision petition are stated as follows.

2. The appeal was filed in the year 1994. Court fee was not paid. Thereafter, the court granted time till 20.3.1997 to pay court fee. As it was not paid, the appeal was rejected. The revision petitioners moved two applications under Section 151 and Order 41 Rule 19 of C.P.C. for receiving court fee and for re-admitting the appeal. After a span of five years, the court dismissed those applications and held that a Second Appeal is maintainable. Meanwhile there was a decision by this Court whereby it was held that an application for review as well as Second Appeal is the remedy provided when a plaint is rejected

for non-payment of court fee. Therefore, with a delay of 3447 days, the revision petitioner filed an application for review. Learned Additional District allowed the delay condonation application, but dismissed the review application stating that there are no grounds to review. I could have appreciated the finding of the learned District Judge if he had dismissed the application for condonation of delay of 3447 days and thereafter dismissed the review application on that ground.

3. When the matters are considered together and by virtue of the order condoning the delay now the delay to be explained is between 20.3.1997 and 21.5.1997 when the two applications were filed and court fee was paid. We cannot find fault with the revision petitioners for not prosecuting the matter diligently till the disposal of those applications in 2002. But the delay was later and that had been condoned against which no writ petition or revision has been filed and so the sole question that survives for consideration is whether there is any ground to review.

4. The appellants are persons who are eager and keen to prosecute the appeal. The conduct of the appellants would also reveal that they wanted to pay court fee and that is why

immediately after the rejection of the plaint along with two applications, they paid the court fee. It was done as early as on 21.5.1997. It can be stated that the appellants have been keen in prosecuting the proceeding. Therefore, I find that the court below should have allowed the review application, receive the court fee paid as early as on 21.5.1997, restore the appeal and proceed with the matter.

5. Therefore the order under challenge is set aside and review petition is allowed and the Additional District Judge is directed to restore A.S.No.97 of 1994 and pass a formal order receiving the court fee and try to dispose of the matter after hearing both sides in accordance with law as early as possible, being a matter of 1994. Parties are directed to appear before the court below on 19.12.2007.

Civil Revision Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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